



FH  
[REDACTED]

**STATE OF WISCONSIN**  
**Division of Hearings and Appeals**

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In the Matter of

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

DECISION

MDV/173710

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**PRELIMINARY RECITALS**

Pursuant to a petition filed April 18, 2016, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Waukesha County Health and Human Services in regard to Medical Assistance (MA), a hearing was held on June 14, 2016, at Waukesha, Wisconsin.

There remains no issue for determination.

There appeared at that time and place the following persons:

**PARTIES IN INTEREST:**

Petitioner:

[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

Respondent:

Department of Health Services  
1 West Wilson Street, Room 651  
Madison, Wisconsin 53703

By: [REDACTED]  
Waukesha County Health and Human Services  
514 Riverview Avenue  
Waukesha, WI 53188

**ADMINISTRATIVE LAW JUDGE:**

Corinne Balter  
Division of Hearings and Appeals

**FINDINGS OF FACT**

1. The petitioner (CARES # [REDACTED]) is a resident of Waukesha County.
2. The petitioner had transferred her home to her daughter.
3. On January 6, 2016 the petitioner applied for institutional MA coverage.

4. The agency denied the petitioner's application finding that there was a divestment.
5. The petitioner's daughter has since transferred the home back to her mother, listed the home for sale, and accepted an offer on the home. The home had significant damage to three of the four basement walls requiring major basement repairs including possibly rebuilding those walls.
6. Because the home had been transferred back to the petitioner, the agency concluded that there was no longer a divestment, and approved the petitioner for institutional MA coverage effective December 1, 2015.

### **DISCUSSION**

When an individual, or a person acting on behalf of the individual or his spouse, transfers assets at less than fair market value, the individual is ineligible for MA coverage of nursing facility services. 42 U.S.C. 1396p(c)(a)(A); Wis. Stat. §49.453(2)(a); Wis. Adm. Code § DHS 103.065(4)(a); *MA Handbook*, 17.2.1. This transfer is defined as a divestment. *Id.* The divestment must occur during the five year look back period. Wis. Stat. § 49.453(1)(f)(2m). Divestment does not impact on eligibility for standard medical services such as physician care, medications, and medical equipment. The divestment penalty period is the determined by dividing the value of property divested by the average monthly cost of nursing facility services. Wis. Stat. § 49.453(3); *MA Handbook*, App. 17.5. When the entire divested resource is returned to the individual, the entire penalty period is nullified. *MA Handbook*, App. 17.5.5.1. The agency then re-evaluates the individual's Medicaid eligibility for long term care services retroactively, back to the beginning date of the previously imposed penalty period. *Id.*

In this case the original divestment appears to be the transfer of the petitioner's home. Prior to the hearing, the petitioner's daughter cured the divestment by transferring the home back to the petitioner. This allowed the petitioner to be eligible for institutional MA effective December 1, 2015. At this point there is no issue for my determination.

The petitioner's daughter listed her mother's home for sale, and accepted an offer on the home. The home had basement issues that may require three of the four walls to be rebuilt. A basement contractor ended up purchasing the home. The petitioner's daughter testified that his offer was significantly higher than the other offers. This is probably because he is a basement contractor and can do the work at a reduced rate. The petitioner's daughter was concerned that the sales price may be a divestment. The agency does not allege that it is a divestment. That issue is not in front of me. I refer the agency to MDV/168214 if this issue arises. That decision is available on the DHA website at <https://agency.wisconsin.gov/sites/dha/Shared%20Documents/2015/168214.pdf#search=divestment%20and%20arms%20length%20transaction%20and%20home>. At this point there is no issue for me to decide.

### **CONCLUSIONS OF LAW**

There remains no issue for determination.

**THEREFORE, it is**

**ORDERED**

That the petition is dismissed.

### **REQUEST FOR A REHEARING**

You may request a rehearing if you think this decision is based on a serious mistake in the facts or the law or if you have found new evidence that would change the decision. Your request must be **received within 20 days after the date of this decision**. Late requests cannot be granted.

Send your request for rehearing in writing to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400 **and** to those identified in this decision as "PARTIES IN INTEREST." Your rehearing request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and explain why you did not have it at your first hearing. If your request does not explain these things, it will be denied.

The process for requesting a rehearing may be found at Wis. Stat. § 227.49. A copy of the statutes may be found online or at your local library or courthouse.

## **APPEAL TO COURT**

You may also appeal this decision to Circuit Court in the county where you live. Appeals must be filed with the Court **and** served either personally or by certified mail on the Secretary of the Department of Health Services, 1 West Wilson Street, Room 651, Madison, Wisconsin 53703, **and** on those identified in this decision as "PARTIES IN INTEREST" **no more than 30 days after the date of this decision** or 30 days after a denial of a timely rehearing (if you request one).

The process for Circuit Court Appeals may be found at Wis. Stat. §§ 227.52 and 227.53. A copy of the statutes may be found online or at your local library or courthouse.

Given under my hand at the City of Milwaukee,  
Wisconsin, this 15th day of June, 2016

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\sCorinne Balter  
Administrative Law Judge  
Division of Hearings and Appeals



**State of Wisconsin\DIVISION OF HEARINGS AND APPEALS**

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The preceding decision was sent to the following parties on June 15, 2016.

Waukesha County Health and Human Services  
Division of Health Care Access and Accountability